

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:)	
VALLEY WOOD PRESERVING COMPANY, INC.))	U.S. EPA Docket No. 95-11
A CALIFORNIA CORPORATION AND)	
HAROLD LOGSDON)	
)	
Proceeding under Section 122(h))	ADMINISTRATIVE ORDER
of the Comprehensive Environmental)	ON CONSENT
Response, Compensation, and)	
Liability Act of 1980, 42 U.S.C.)	
9601 et seq., as amended.)	

I. INTRODUCTION

This Administrative Order on Consent ("Consent Order or Order") is issued by the United States pursuant to the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §§§ 9604, 9606 and 9622. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9.

This Consent Order is issued to the Valley Wood Preserving Company, Inc. ("VWP") and Harold Logsdon (collectively referred to as "Respondents"). Respondents agree to undertake all actions required by the terms and conditions of this Consent Order. Respondents further consent to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or

enforce its terms.

II. PURPOSE OF CONSENT ORDER

1. The purpose of this Consent Order is to expedite the continuation of the remedial design at the Valley Wood Preserving Superfund Site, located in Turlock, California ("Site") (as "Site" is defined in Section III) by having the Respondents prepare detailed plans and specifications for implementation of each element of the Groundwater Pilot Study ("GPS") (as "GPS" is defined in Section III) as a portion of the remedial design at the Site, as provided for in EPA's Explanation of Significant Differences ("ESD") for the Site dated July 22, 1994, and, subject to the terms of this Consent Order, having the Respondents implement the GPS. Respondents further agree to enter into Consent Decree negotiations, as provided in paragraphs 22 and 24 of this Order, addressing the performance of the Remedial Design/Remedial Action ("RD/RA") for the groundwater remedy as required by the Record of Decision for the Site signed September 27, 1991, at the conclusion of the pilot study. In the event the GPS, in EPA's determination, fails to establish that the in-situ groundwater treatment can attain the cleanup standards for the groundwater cleanup set forth in the ROD and the performance standards to be established in the design documents to be submitted pursuant to the Work Plan required by this Order, Respondents agree to continue to operate and maintain those portions of the groundwater treatment system, as determined by EPA, required to contain the contaminant plume and prevent

further contaminant migration during later Consent Decree negotiations. To the extent not resolved, this Consent Order does not discharge or affect in any manner the Respondents' liability for any other claims the United States may have with regard to the Identified Contamination (as "Identified Contamination" is defined in Section III) at the Site. Respondents participation in this Order shall not be deemed to be an admission of liability as to any of the facts asserted herein by EPA.

III. DEFINITIONS

2. Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Consent Order, or in the Exhibits and Appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments & Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq.

"Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Consent Order and any appendix, this Consent Order shall control.

"Construction, operation and maintenance activities" shall mean the Respondents', or their contractor's, installation/construction, and operation and maintenance of the in-situ groundwater treatment system, installed as part of the GPS, and any associated structures at the Site. "Operation and Maintenance activities" shall include future operation and maintenance of the aforesaid in-situ groundwater treatment system and associated structures until such time as EPA approves the cessation of such activities.

"Contractor" shall mean Respondents' contractor(s) and subcontractors contracted to perform the installation, construction, and operation and maintenance activities relating to the in-situ groundwater treatment system, installed as part of the GPS.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"ESD" shall mean the Explanation of Significant Differences issued by EPA on July 22, 1994.

"Groundwater Pilot Study" or "GPS" shall mean the pilot study provided for in EPA's ESD dated July 22, 1994, which is being designed and implemented pursuant to this Consent Order as a portion of the remedial design for the groundwater remedial action at the Site.

"Identified Contamination" shall mean any contamination, or threat of contamination, resulting from the release, or threat of release, of any hazardous substances, pollutants, contaminants, or solid waste identified in the administrative record for the Site as of the effective date of EPA's Record of Decision ("ROD") for the Site, dated September 27, 1991.

"In-Situ Treatment System" shall mean the in-situ groundwater treatment system being designed and installed at the Site and evaluated as part of the GPS, as provided for in the ESD, dated July 22, 1994.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

"Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

"Parties" shall mean the United States, the Valley Wood Preserving Company, Inc. ("VWP") and Harold Logsdon.

"Past Costs" shall mean those costs incurred by the United States performing response actions at the Site prior

to October 31, 1992.

"Record of Decision" or "ROD" shall mean the record of decision, concurred on by the State of California, issued by the United States Environmental Protection Agency on September 27, 1991.

"RD/RA" shall mean the remedial design/remedial action required to implement the groundwater remedy selected in the ROD.

"Respondents" shall mean Valley Wood Preserving, Inc., and Harold Logsdon, both individually and collectively.

"Section" shall mean a portion of this Consent Order identified by a Roman numeral and including one or more paragraphs.

"Site" shall mean the Valley Wood Preserving Superfund Site, as described collectively in the following documents: the listing document placing the Site on the National Priorities List ("NPL"), the Remedial Investigation/Feasibility Study ("RI/FS"), and the EPA's ROD for the Site, dated September 27, 1991.

"State" shall mean the State of California, and all of its political subdivisions, including the California Department of Toxic Substances Control ("DTSC").

"United States" shall mean the United States of America.

IV. FINDINGS OF FACTS

3. The Valley Wood Preserving site is an approximately 14.4 acre, inactive wood preserving facility located at 2234 South Golden State Boulevard, Turlock, California. A single-family residence is located in the northeast corner of the site. Subsurface features at the site include subsurface Turlock Irrigation District ("TID") drains and subsurface piping.

4. In 1979, as evidenced by various documents, the California Central Valley Regional Water Quality Control Board ("CVRWQCB") identified toxic wood treating chemicals (chromium, arsenic, and copper) within the on-site storage pond and holding tanks, and in on-site and off-site soils. Additionally, groundwater contamination with these same substances was detected in the shallow, unconfined aquifer beneath the Site.

5. In March, 1987, the California Department of Health Services ("DHS"), now known as the California Department of Toxic Substances Control ("DTSC"), issued a remedial action order to VWP directing VWP to conduct a remedial investigation/feasibility study ("RI/FS") and to develop a remedial action plan ("RAP"). VWP submitted a draft RI report in January, 1989. This RI report has since been revised several times.

6. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Valley Wood Preserving Site was proposed for inclusion on the National Priorities List ("NPL") on June 24, 1988, and added to the NPL on March 3, 1989. See, Fed. Reg. 13296. The United States EPA ("EPA") became the lead agency at the Site in

September, 1989.

7. In August, 1989, EPA directed VWP to conduct monthly domestic well sampling. In October, 1989, several domestic wells previously sampled revealed the presence of detectable concentrations of hexavalent chromium. In December, 1989, EPA and VWP entered into a Consent Order wherein VWP agreed to conduct two aquifer tests to determine the aquifer's hydrologic characteristics and to aid in the design of an interim groundwater extraction system.

8. On May 4, 1990, Harold Logsdon signed a second Consent Order on behalf of VWP, Inc., wherein VWP agreed to conduct an RI/FS at the Site.

9. In June, 1991, the RI/FS was completed, and illustrated that: 1) the contaminants of concern in both the soils and the groundwater at the Site included arsenic and hexavalent chromium; 2) the groundwater plume was continuing to migrate towards the domestic wells; and 3) additional investigation of the vertical extent of the groundwater plume was required to successfully design and implement the extraction well field.

10. Additional sampling was conducted in September, 1993, and February, 1994, to further characterize the soil contamination.

V. DETERMINATIONS

Based upon the administrative record for this Site, EPA has made the following determinations:

11. The Valley Wood Preserving Superfund site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

12. The Respondents, VWP and Harold Logsdon, are each "persons" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21);

13. The Respondents are each potentially responsible parties ("PRPs") within the meaning of Section 106, 107(a), and 122 of CERCLA, 42 U.S.C. §§ 9606, 9607(a), 9622;

14. Chromium, arsenic, and copper are "hazardous substances" as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14);

15. The past, present or future migration of hazardous substances from the Site constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

16. EPA has determined, based on a evaluation of previously collected data and data received and reviewed after the issuance of the ROD, that performance of the GPS is warranted as part of the remedial design of the groundwater remedy at the Site;

17. Prompt settlement with the Respondents for performance of the GPS, and/or their agreement to enter into Consent Decree negotiations as provided in paragraphs 22 and 24 of this Order,

is practicable and in the public interest within the meaning of Section 122 of CERCLA, 42 U.S.C. § 9622.

VI. ORDER

Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in the consideration of the promises and covenants set forth herein, it is hereby AGREED TO AND ORDERED:

VII. WORK TO BE PERFORMED

18. All design work required by this Order, including but not limited to, all design submittals, shall be performed and certified by a qualified professional engineer. As part of the Work Plan required to be submitted to EPA for approval pursuant to paragraphs 19 and 20 below, Respondents shall notify EPA in writing of the name, title, and qualifications of such professional engineer, as well as the names of any other contractors, and/or subcontractors to be used in carrying out the terms of this Order. The qualifications of all persons undertaking the work for Respondents, including such persons past work experience, professional registration(s), and educational background shall be subject to EPA's review, for verification that such persons have the minimum required technical background and experience to perform the work required pursuant to this Order. If EPA disapproves in writing of the technical or other qualifications of any person(s), Respondents shall, within fifteen (15) days of the written notice, notify EPA of the identity and qualifications of the replacement(s). If EPA

subsequently disapproves of the replacement(s), EPA may, as is its right under CERCLA and the NCP, conduct the pilot study and seek reimbursement of its costs from Respondents.

19. Within 30 days of the effective date of this Consent Order, the Respondents shall submit a Work Plan ("Work Plan"), which shall provide for the design and construction of the in-situ groundwater treatment system set forth in the ESD.

20. As part of the Work Plan, the Respondents shall propose measures to assure that the installation and operation and maintenance of the in-situ groundwater treatment system complies with all applicable water quality regulations. Respondents Work Plan shall also include, but not be limited to:

- * information regarding the specific treatment process to be utilized during the implementation of the pilot study (e.g., treatment solutions to be used, the predicted chemical reactions, and effect on total water quality concentrations), and all pertinent technical data and procedural information related thereto;

- * an organizational chart that summarizes the resources and personnel, including the names and respective job titles of all firms, companies, vendors, or other individuals who will be used to carry out the terms of this Order;

- * the qualifications of all firms, companies, vendors, or other individuals who will be retained to implement any or all of the pilot study, including but not limited to the name, title, educational background, professional registration, past employment history, and experience for all key personnel, including those individuals responsible for the health and safety, quality assurance/quality control, and analytical services that will be required as part of the work to be performed pursuant to this Order; and

- * a schedule, expressed in calendar days.

EPA, after a reasonable opportunity for review and comment by the

State, will review and approve, disapprove, provide comments to, or modify the Work Plan and all documents submitted pursuant to the Work Plan for the implementation of the in-situ groundwater treatment system. In the event EPA provides comments to Respondents Work Plan, unless otherwise noted, Respondents shall submit a revised Work Plan addressing EPA's comments within thirty (30) days of receipt of EPA's comments for EPA approval in accordance with this paragraph. In the event of disapproval, EPA shall specify its reasons for such disapproval and provide comments regarding the disapproval. Respondents shall have thirty (30) days thereafter to submit a revised Work Plan for EPA approval incorporating EPA's comments.

21. Upon its approval by EPA, the Work Plan, including all deliverables, plans, technical memoranda, reports, performance standards, and schedules therein, shall be incorporated into and be enforceable under this Consent Order. Any non-compliance with such EPA-approved reports, plans, performance standards, and schedules shall be considered a failure to achieve the requirements of this Consent Order and may subject Respondents to penalties set forth in Section XIII. Upon approval of the Work Plan by EPA, Respondents shall implement all work required thereunder within the time frames and schedules agreed to by EPA. All work shall be performed in a manner which complies with the applicable requirements of CERCLA, the NCP, and the standards, specifications, and schedules contained in the approved Work Plan.

22. The parties believe, based on information known to date, that the performance of the GPS and implementation of the in-situ treatment system will: 1) reduce the quantity of hazardous substances currently being released into groundwater at and around the Site; and 2) demonstrate that the in-situ treatment system can achieve the cleanup standards set forth in the ROD for groundwater more expeditiously than the selected groundwater remedy. The Respondents acknowledge, and accept the risk by entering into this settlement, that the GPS may fail to demonstrate that the in-situ treatment system is capable of remediating the groundwater at the Site to the required cleanup standards and achieving performance standards. In the event EPA, in its non-reviewable discretion, determines that the GPS fails to achieve the desired results, after an opportunity for review and comment by the State and Respondents, the Respondents agree to enter into Consent Decree negotiations, as provided in paragraph 24 of this Order, to address the implementation of the RD/RA set forth in the ROD and any other response actions deemed necessary by EPA to achieve the cleanup standards and performance standards for groundwater required in the ROD, including, but not limited to those set forth in paragraphs 23 and 24 below. Performance of the RD/RA set forth in the ROD will be pursuant to a Consent Decree to be negotiated by the Parties at a future date. The Respondents agree to cooperate fully with the United States, the State, and their respective employees, agents, contractors or other authorized representatives conducting any

such future response activities at the Site and EPA's or the State's assessment of any natural resource damages at the Site.

23. If at the completion of the pilot study, EPA determines, after a reasonable opportunity for review and comment by the State and the Respondents, that continued operation of the in-situ groundwater treatment system can achieve the cleanup standards in the ROD for the contaminated groundwater at the Site, EPA shall notify Respondents of this determination in writing, and Respondents agree to enter into Consent Decree negotiations to address the performance of the groundwater Remedial Action at the Site, as provided in paragraph 24 of this Order. Respondents agree to continue to operate and maintain those portions of the groundwater treatment system required to contain the contaminant plume and prevent further contaminant migration during future Consent Decree negotiations. Should EPA determine, after a reasonable opportunity for review and comment by the State and the Respondents, that additional actions are necessary to complete the pilot study and determine if the in-situ treatment system should be part of the final remedial action to address the contaminated groundwater at the Site, EPA shall notify the Respondents of this determination in writing. Respondents shall, within 30 days of receipt of this notification, submit to EPA an Amended Work Plan ("AWP") which shall provide for the design and construction of any additional response actions deemed necessary by EPA. EPA, after a reasonable opportunity for review and comment by the State, will

review and approve, disapprove, or modify the plans, specifications, and construction guidelines for the additional response actions set forth in the AWP. Upon its approval by EPA, the AWP shall be incorporated into and be enforceable under this Consent Order.

24. In the event EPA determines, at the completion of the pilot study, that the GPS has failed to demonstrate that the in-situ groundwater treatment system can achieve the groundwater cleanup standards set forth in the ROD and/or the performance standards set forth in the Work Plan or Amended Work Plan, EPA shall, after a reasonable opportunity for review and comment by the State, notify the Respondents of this determination in writing. The Respondents agree, within 30 days of receipt of EPA's determination, to enter into Consent Decree negotiations for the performance of the groundwater RD/RA for the design and construction of the groundwater remedy set forth in the ROD. EPA agrees that Respondents can, as part of the implementation of the groundwater RD/RA required by the ROD, utilize and include to the extent practicable, any/or all portion(s) of the in-situ treatment system in their design and construction of the groundwater remedy set forth in the ROD.

VIII. DESIGNATED PROJECT COORDINATORS

25. EPA has designated a Project Coordinator for the Site who shall have the authorities, duties, and responsibilities vested in the Remedial Project Manager by the NCP. For the purposes of this Consent Order, EPA's designated Project Manager

is Michelle Lau, who can be reached at the address and phone number listed in Section XXV. Respondents shall notify EPA of the name of their Project Coordinator within fifteen (15) days of the effective date of this Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent practicable, all oral communication between Respondents and EPA concerning the activities performed pursuant to this Order shall be directed to the Project Coordinators. EPA and Respondents may change their respective Project Coordinators. Any such change shall be accomplished by notifying the other party in writing at least one week prior to the change.

26. Consistent with the provisions of this Order, the EPA Project Coordinator shall also have the authority vested in the On-Scene-Coordinator ("OSC") by the NCP. This includes, but is not limited to, the authority to halt, modify, conduct, or direct tasks required by this Order and/or undertake any response action(s) (or portions of response action(s)) when conditions at the Site present or may present a threat to public health or welfare or the environment as set forth in the NCP. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage of work.

IX. FUTURE RESPONSE ACTIONS

27. Notwithstanding this Consent Order, the EPA reserves its right to undertake future response actions, and/or assessment of natural resource damages at the Site. The EPA also reserves its right to seek injunctive relief or issue administrative

orders requiring parties (including the Respondents, except if the right to seek such relief from the Respondents is barred by Section XV herein) to perform response actions or assessments at the Site. Nothing in this Consent Order shall in any manner restrict or limit the nature or scope of response actions or assessments which the EPA may take or require in exercising their authority under applicable federal law.

X. DUE CARE

28. Nothing in this Consent Order shall be construed to relieve the Respondents of their duty to exercise due care or their duty to require their contractors to exercise due care with respect to hazardous substances, pollutants, contaminants, and solid wastes at the Site or their duty to comply with all applicable federal and state laws and regulations.

XI. COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAWS

29. The Respondents agree to comply with all applicable state and federal laws and regulations, specifically including any and all procurement regulations, decrees, orders, fees, and permits issued or required under state or federal law, in connection with their construction, operation and maintenance activities on the Site. This Consent Order does not constitute a permit. This Consent Order does not alter any of the rights or obligations of the Respondents under the laws and regulations administered by the United States.

XII. FORCE MAJEURE/DISPUTE RESOLUTION

30. Force majeure, for the purposes of this Consent Order,

is defined as any event arising from causes beyond the control of the Respondents, or any entity controlled by the Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Order despite the Respondents' best efforts to fulfill that obligation. "Best efforts to fulfill that obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of such an event both as it is occurring and after it has occurred, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete any work required by this Consent Order.

31. If any event occurs or has occurred that will delay the performance of any work required to be performed under this Consent Order, whether or not caused by a force majeure event, the Respondents shall notify EPA's Project Coordinator as soon as practicable, but in no event shall this be longer than 72 hours of when the Respondents knew of the event or should have known of the event. Within five (5) days thereafter, the Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay, the anticipated duration of the delay, all actions taken to minimize the delay, a schedule of action(s) to be taken to prevent or mitigate the effects of the delay, and the Respondents' rationale for attributing the delay to a force majeure event. Additionally, the Respondents shall provide a statement as to whether, in their opinion, such an event may

cause or contribute to an endangerment to public health, welfare, or the environment.

32. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of any work required by this Consent Order shall be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete that work. If EPA determines that a delay is attributable to a force majeure event, EPA will notify the Respondents in writing of the length of any extension, if any, for performance of any work affected by the force majeure event.

33. If the Respondents disagree with EPA's decision concerning; 1) the occurrence of force majeure event, or 2) the granting of an extension of time to perform activities required by this Consent Order, the Respondents shall notify EPA in writing within 5 days of EPA's decision. EPA and the Respondents shall first attempt to resolve such dispute during an informal negotiation period not to exceed seven (7) days. The negotiation period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the negotiation period shall not constitute final agency action giving rise to judicial review. Any agreement reached by the parties pursuant to this section shall be in writing, signed by both parties, and shall upon signature by both parties, be incorporated into and become an enforceable element of this Order.

34. If the parties are unable to resolve such dispute during the informal negotiation period, the position advanced by EPA shall be considered binding unless, within five (5) days of the conclusion of the informal negotiation period, the Respondents serve on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position relied upon by the Respondents. Within fourteen days (14) of receipt of Respondents' Statement of Position, EPA, after a reasonable opportunity for review and comment by the State, shall serve upon the Respondents its Statement of Position, including, but not limited to, any factual data, analysis or opinion supporting that position relied upon by EPA. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position submitted pursuant to this paragraph. The Director of the Waste Management Division, EPA Region IX, shall issue a final administrative decision resolving the dispute based on the administrative record. The decision shall be binding upon the Respondents.

35. Following resolution of the dispute, as provided by this Section, the Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. No decision by EPA made pursuant to this section shall constitute final agency action giving rise to judicial review.

XIII. DELAY IN PERFORMANCE/
 STIPULATED AND STATUTORY PENALTIES

36. For each day that Respondents fail to perform fully any requirement of this Order in accordance with the schedules established pursuant to this Order, Respondents shall be liable for stipulated penalties. Penalties shall begin to accrue on the day performance is due or a violation of this Order occurs, and shall continue to accrue until the final day of the correction of noncompliance or completion of the required activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violation of this Order. Penalties shall accrue in the amount of \$500 per day per violation for the first seven days of noncompliance, and \$1,000 per day per violation for each day of noncompliance thereafter. Penalties shall accrue as provided above regardless of whether EPA has notified Respondents of the violation or made a demand for payment, but payment need only be made upon written demand.

37. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), and to civil penalties pursuant to Sections 122(l) and 109 of CERCLA, 42 U.S.C. §§ 9622(l) and 9609. If the EPA must bring an action to collect payment of any payment required by this Order, the Respondents shall reimburse the EPA for all costs of such action, including but not limited to costs of attorney time.

XIV. COMPLETION OF WORK

38. Within (30) days after the Respondents conclude that all portions of the GPS have been completed, Respondents shall schedule an on-site inspection of the work to be attended by Respondents and EPA and shall submit a written report to EPA to substantiate and document that the work has been completed in accordance with, and in full satisfaction of, the terms of this Order. If, after the on-site inspection of the work and review of the written report, EPA determines, after a reasonable opportunity for review and comment by the State, that any portion of the work required by this Consent Order has not been completed in accordance with the terms of this Order, EPA will notify Respondents in writing of the activities that must be undertaken to complete the work to be performed under the terms of this Order at the Site. If EPA determines, after a reasonable opportunity for review and comment by the State, that all portions of the work required to be performed under the terms of this Order have been completed in accordance with the terms of this Order, EPA shall notify Respondents in writing that the GPS at the Site shall be deemed completed for the purposes of Section VII above.

XV. COVENANT NOT TO SUE BY EPA

39. Subject to the reservation of rights in paragraphs 42-45 and Section XVII below, upon completion of the work required to be performed pursuant to this Consent Order, the EPA hereby covenants not to sue or take any other civil or administrative

action against Respondents for injunctive relief pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, or Section 7003 of RCRA, 42 U.S.C. § 6973 for the work performed pursuant to this Consent Agreement.

40. Notwithstanding the previous paragraph, the United States and/or the State may bring an action as a result of new contamination at the Site or exacerbation of Identified Contamination caused by or resulting from Respondents' actions. Respondents shall have the burden of proving, in any such action, what contamination is Identified Contamination as opposed to new contamination.

XVI. COVENANT NOT TO SUE BY RESPONDENTS

41. In consideration of the covenants not to sue in Section XV of this Consent Order, Respondents agree, individually and collectively, not to assert any claims or causes of action pursuant to Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), against the United States, its agencies, subdivisions, contractors, agents or employees, or against the Hazardous Substances Response Trust Fund arising out of contamination at the Site, or for reimbursement of funds expended, expenses incurred, payments made, or work performed regarding any of Respondents' construction, operation and maintenance activities undertaken in connection with the implementation of any work required by this Consent Order. Solely for the purposes of this Order, Respondents further agree, individually and collectively, not to seek any other claims, including those for costs, damages,

or attorneys' fees from the United States, its agencies, subdivisions, contractors, agents or employees, arising out of response activities to address Identified Contamination at the Site. This covenant not to sue shall include all claims or causes of action for interference with contracts, business relations and economic advantage. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.25(d).

XVII. UNITED STATES' RESERVATION OF RIGHTS

42. The United States, including EPA, reserves its right to bring any claim or cause of action, administrative or judicial, civil or criminal, in law or equity, which they may have against any person or entity, including Respondents, except as provided by paragraph 39 above. Such reservation includes, without limitation, the right to seek injunctive relief, or issue administrative orders, requiring such persons, including Respondents, to take response actions, and the right to seek reimbursement from any person, including Respondents, for costs incurred by the EPA on any portion of the Site, including any costs incurred in accordance with or pursuant to this Administrative Order on Consent. By issuance of this Order, the EPA assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of the Respondents. The EPA shall not be deemed a party to any contract entered in to by Respondents or their officers, directors, employees, agents,

contractors, or consultants in carrying out actions pursuant to this Order. This provision does not affect any rights, claims or defenses of any kind that the EPA and/or the Respondents may raise against each other in any action between the parties currently pending, or which may be brought in the future, in an appropriate federal District Court.

43. Nothing in this Consent Order is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of action, administrative or judicial, at law or in equity against Respondents, either individually and/or collectively, for:

a. the release or threat of release of hazardous substances, pollutants, contaminants, or solid waste, other than Identified Contamination, resulting from construction and/or disposal activities by Respondents or their contractor(s) except as specifically authorized by the approved Work Plan, the AWP, or the RAP, including, but not limited to, creating a source of contamination other than those currently known to exist as set forth in the ROD, resulting from the actions of Respondents or their contractor(s) on the Site;

b. new contamination at the Site or the exacerbation and/or aggravation of releases of hazardous substances, pollutants, contaminants, or solid waste, including the exacerbation and/or aggravation of Identified Contamination, except for activities specifically authorized by the approved Work Plan, the AWP, or the RAP. Respondents shall have the

burden of proving, in any such action, what contamination is Identified Contamination as opposed to new contamination, or that the release of hazardous substances, pollutants, contaminants, or solid waste, including the exacerbation and/or aggravation of Identified Contamination, were caused by activities performed in accordance with the approved Work Plan, the AWP, or the RAP;

c. any liability for the release or threat of release of any hazardous substance, pollutant, or contaminant, resulting from the introduction of any hazardous substances, pollutants, contaminants or solid wastes by any person at the Site after the effective date of this Consent Order;

d. interference by Respondents or their Contractors with response actions conducted or required by the United States or the State at the Site, or any failure to cooperate (including failure to provide access to the Site) with EPA, the State, or their respective employees, agents, contractors or other authorized representatives conducting response activities under EPA's or the State's direction or oversight at the Site;

e. failure of Respondents or their Contractor(s) to exercise due care regarding any hazardous substances, pollutants, contaminants or solid wastes at the Site, including, but not limited to, Identified Contamination;

f. any and all criminal liability;

g. claims based on failure of Respondents to

meet a requirement or to otherwise comply with the terms of this Consent Order;

h. liability for damages for injury to, destruction of, or loss of natural resources;

i. any matters not expressly included in the covenant not to sue set forth in Section XV of this Consent Order;

j. any liability as a result of new information related to contamination, including "Identified Contamination," present in areas of the Site, as set forth in paragraph 45 below; and

k. any liability for past and future costs incurred by the United States at the Site, including all response and oversight costs incurred by the United States related to this Order and not reimbursed by Respondents, and any penalties and punitive damages for any civil or criminal violation of law or this Order.

44. Subject to the provisions of Section IX (Future Response Actions), the EPA reserves its right to take any response action authorized by CERCLA at the Site, including but not limited to, investigation, studies, removal actions, remedial actions, or assessment of natural resource damages.

45. Notwithstanding any other provisions of this Consent Order, the EPA reserves the right to seek modification of this Consent Order or to institute an action under Section 106 and 107 of CERCLA, 42 U.S.C. §§ 106 and 107, if previously unknown

conditions are discovered or information is received, in whole or in part, after the effective date of this Consent Order, and these previously unknown conditions or this information indicates that the response actions required by this Consent Order are not protective of human health and the environment.

XVIII. INDEMNIFICATION

46. Respondent VWP individually agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: 1) arising from or on account of acts or omissions of Respondent(s) officers, directors, employees, agents, contractors, subcontractors, successors, and assigns in carrying out the provisions of this Order; and 2) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent(s) and any person(s) for performance of work at or relating to the Site, including claims arising out of construction delays. Respondent VWP also agrees individually to pay the United States all costs incurred by the United States, including litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in this paragraph. Respondents Harold Logsdon and VWP additionally agree to: 1) name the United States as an additional named insured on any and all insurance policies obtained by them covering the performance of work under this Order; and 2) to require any contractors or subcontractors

retained to perform work pursuant to this Order to agree to indemnify the United States for any and all claims or causes of action set forth in this paragraph, and to name the United States as an additional named insured on any and all insurance policies either in effect or obtained by them covering the work performed pursuant to this Order.

XIX. RESPONDENTS' RESERVATION OF RIGHTS

47. Respondents, individually and collectively, reserve all rights and defenses which they may have except to the extent expressly waived or released hereunder. The execution of this Consent Order by the Respondents is not an admission of liability or agreement with EPA's findings or determinations contained in this Order, except in proceedings to enforce the terms of this Consent Order.

48. This Consent Order does not grant any rights or affect any liabilities of any person, firm, or corporation other than the Respondents who enter into this Consent Order.

XX. CERTIFICATION OF RESPONDENTS

49. Each Respondent certifies that, to the best of its knowledge and belief, it has fully and accurately complied with all requests made by EPA for disclosure to EPA of information currently in its possession, or in the possession of its officers, directors, shareholders, employees, contractors, or agents, which is relevant to the financing, development, construction, operation and maintenance of the in-situ groundwater treatment system, and any information relating to any

potential release of hazardous substances, pollutants, or contaminants at the Site.

XXI. DISCLAIMER

50. This Consent Order in no way constitutes a finding by EPA regarding the risks to human health and the environment which may be posed by contamination at the Site. This Consent Order does not constitute a representation by EPA that the Site is fit for any particular purpose.

XXII. RETENTION OF RECORDS

51. The Respondents shall retain and make available all business and operating records, reports, contracts, site studies and investigations, and other documents in their possession relating to any and all releases of hazardous substances, pollutants, or contaminants at the Site for at least ten (10) years after the effective date of this Consent Order unless otherwise agreed in writing by EPA, after consultation with the State. Thirty (30) days prior to any proposed destruction of any documents required to be maintained pursuant to this paragraph, Respondents shall notify EPA and provide EPA with an opportunity to copy any and all such documents.

XXIII. SITE ACCESS AND NOTICE

52. a. The Respondents, individually and collectively, hereby grant to the EPA, its authorized representatives, contractors, agents, and all other persons performing response actions under EPA oversight an irrevocable right of access at any reasonable time, with 12 hours prior notice to the Respondents,

to the extent of all rights of access, ingress, egress, or use as the Respondents, individually or collectively, may possess or acquire to the Site or to any property located at the Site for any purposes relating to the terms of this Consent Order, or to performing, directing or monitoring the performance of response actions at the Site, including, but not limited to:

1. verifying any data or information submitted to the United States;
2. conducting investigations relating to contamination at the Site;
3. obtaining samples;
4. assessing the need for, planning, or implementing additional response actions at or near the Site and;
5. inspecting and copying records related to this Consent Order.

Such access shall include, without limitation, the right to move freely about any right-of-way or other property at the Site, make observations, take notes, and use a camera, video recording, sound recording, or other documentary type of equipment.

b. Each Respondent shall file in the land records governing the City of Turlock, California, a notice, approved in advance by EPA, to subsequent purchasers of any other property interest acquired by said Respondent concerning property located at the Site, that EPA makes no representations as to the appropriate use of the property at the Site. The particular

Respondent shall provide a proposed notice to EPA within 15 days after the effective date of this Consent Order and shall file the notice within 30 days after the notice is approved by EPA.

53. The Respondents agree, individually and collectively, that they will fully cooperate with representatives of the EPA in its inspections of the Site or other property located at the Site in which the Respondents acquire or possesses an interest. The EPA agrees to use reasonable efforts under the circumstances to minimize any interference with the Respondents' construction, operation and maintenance activities by such entry and actions.

54. The Respondents further grant the EPA access to any property in their control at the Site and the Site to the extent access is authorized by CERCLA or other applicable law, but nothing herein shall in any way limit such rights to access granted by CERCLA or other applicable law. To the extent that Respondents require access to land other than land they own or control, Respondents shall use best efforts to obtain access agreements from the present owners or lessees within sixty (60) days of the effective date of this Consent Order. Such agreements shall provide reasonable access for EPA, its contractors and oversight officials, the State and its contractors, and Respondents and their authorized representatives. In the event Respondents are not able to obtain access to property owned or controlled by others, Respondents shall, within seventy-two (72) hours orally and within seven (7) days in writing of the time access is denied, notify EPA

regarding both the lack of, and efforts to obtain, access. EPA shall review such notification and if EPA determines that Respondents have complied with the requirements of this Section, the penalty provisions of Section XIII shall not apply.

55. Should any tools, equipment, building improvements, or other property owned by EPA or its authorized representative(s), agents, contractors, and assigns be taken to or placed within any real property over which the Respondent(s) has(ve) control, by or at the direction of EPA or the State, or their respective officers, agents, contractors, and assigns for purposes described in this section, such property shall remain the property of EPA or its authorized representatives, agents, contractors, and assigns, as appropriate. EPA agrees to remove, or make arrangements for the removal of all such property after such property no longer is needed to complete remediation activities at the Site.

XXIV. ASSIGNMENT OF RIGHTS

56. Each Respondent's rights, benefits and obligations under this Consent Order may be assigned or transferred to any person upon the non-reviewable written approval and consent from the EPA, after consultation with the State, in its sole discretion. Any assignment of rights approved by EPA pursuant to this Section shall not impact any rights or benefits which inure to the State under State law.

XXV. NOTICES

57. All notices, demands or other communications required

to be given or made by one party to another in connection with this Consent Order shall be given in writing and shall be deemed to have been given when posted by certified or registered mail, return receipt requested, or when sent by a recognized overnight courier service for next day delivery, to the following:

- a. if to Valley Wood Preserving Company, Inc., and/or

Harold Logsdon:

David D. Doyle, Esq.
Kimble, MacMichael & Upton
5260 North Palm Avenue, Suite 221
Fresno, CA. 93704
(209) 435-5500

- b. if to the United States:

Michelle Lau ((H-6-2)
Hazardous Waste Management Division
Remedial Action Branch
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA. 94105
(415) 744-2227

David A. Rabbino (RC-3-1)
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA. 94105
(415) 744-1336

All notices shall be deemed received on the date delivered by hand or by confirmed telefax, on the day after sent by recognized overnight courier service for the next day delivery, and on the third day after sent by registered or certified mail.

XXVI. PERSONS BOUND

58. Each party executing this Consent Order shall: 1)
confirm the execution of the Consent Order by telefaxing a copy

of the signature page on the date executed; and 2) send copies of the signature page to the other signatories by registered or certified mail on the first business day thereafter.

59. This Consent Order applies to and is binding upon the Parties and their successors and assigns. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into this Consent Order and to execute and to fully legally bind such party to this Consent Order. In the event that a Respondent transfers title or possession of any property interest acquired in property at the Site, the Respondent shall notify EPA prior to any such transfer and shall continue to be bound by all terms and conditions of this agreement unless the EPA, after consultation with the State, agrees otherwise and modifies this Consent Order accordingly. Any transfer by a Respondent of title or possession of any property interest it acquires in property at the Site approved by EPA pursuant to this Section shall not impact any rights or benefits which inure to the State under State law.

XXVII. PUBLIC COMMENT AND AGENCY REVIEW

60. EPA will implement a Community Relations Program in accordance with Agency policies, guidance documents and public comment policy. Respondents shall participate in community relations activities organized by EPA when such participation is deemed appropriate by EPA.

XXVIII. NOTICE TO STATE

61. As required by Section 106(a) of CERCLA, 42 U.S.C.

§9606(a), notice of the issuance of this Order has been given to the State of California.

XXIX. ASSURANCE OF ABILITY TO COMPLETE WORK

62. Respondent Harold Logsdon has presented for EPA's review financial information to address EPA's concern that Respondents have sufficient assets to perform the work required by this Order. The documents presented are listed in appendix A, attached hereto. Respondent Harold Logsdon has also executed a Certification, attached as appendix B hereto, that: 1) the financial information contained in the documents in Appendix A is accurate; and 2) other than transfers made for the payment of environmental costs at the Valley Wood Preserving site and the Coast Wood Preserving site, that he has not substantially transferred or otherwise encumbered any of his assets since the filing of his 1993 Federal and State Income Tax Returns. EPA has determined, based on the information provided and solely for the purposes of implementing the work required by this Order, that Respondents appear to have sufficient assets to perform the work required by this Order. Additionally, Respondents represent that there exists no mortgage or other known encumbrances on the title to the property which comprises the Site, and agree to the United States filing a lien on the Site property pursuant to section 107(1) of CERCLA and that this agreement shall serve as notice of the filing of such lien as required by section 107(1)(3).

63. If, during the implementation of the work required by this Order, EPA determines that Harold Logsdon's Certification is

inaccurate, Respondents shall be required to demonstrate their ability to perform all work required by this Order by obtaining, and presenting to EPA for approval one of the following items: 1) a performance bond; 2) a letter of credit; or 3) guarantee by a third party. Such presentation shall be required to be made within fifteen (15) days of EPA's notification to Respondent Harold Logsdon that it has determined that his Certification is inaccurate. EPA may disapprove the financial assurance mechanism presented if in EPA's determination it does not provide adequate assurance that Respondents are able to complete the work to be performed under Section VII of this Consent Order.

XXX. EFFECTIVE DATE

64. The effective date of this Consent Order is the date on which it is fully executed by the Parties. After this Consent Order becomes effective, any breach of any provision of this Consent Order shall not affect the validity or effect of this Consent Order and the party in breach of any provision shall be subject to an action to enforce the terms of any such provision(s).

XXXI. AMENDMENT

65. This Consent Order, or any part thereof, may be amended by mutual written agreement between the parties.

IT IS SO AGREED AND ORDERED:

VALLEY WOOD PRESERVING COMPANY, INC.:

Harold Logsdon

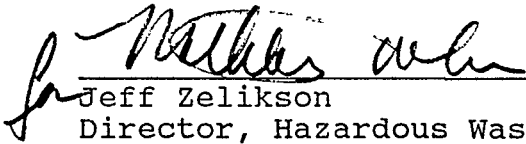
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3/10/95
DATE

HAROLD LOGSDON:
Harold Logsdon

DATE: 3/10/95

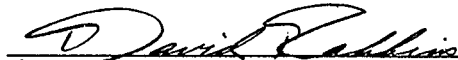
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX



Jeff Zelikson
Director, Hazardous Waste Management Division

3/29/95

Date



David A. Rabbino
Assistant Regional Counsel

3/29/95

Date